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November 1, 2006

The Honorable Chairman and Members of  
the Hawaii Public Utilities Commission  
Kekuanaoa Building  
465 South King Street, 1st Floor  
Honolulu, Hawaii 96813

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PUBLIC UTILITIES  
COMMISSION

Dear Commissioners:

RE: Docket No. 05-0315 -- Application of Hawaii Electric Light Company, Inc.  
for Approval of Rate Increases and Revised Rate Schedule

By Order No. 22903, the Commission established the procedural schedule for the instant proceeding. Pursuant to that schedule, there were to be six submissions of information requests, with responses due three weeks after submission. The sixth and final submission of discovery is to be filed today, Wednesday, November 1, 2006.

It should be noted that the schedule allowing for six submissions was intended to provide the Consumer Advocate with ample opportunity to ask follow up questions on the responses received to each information request.<sup>1</sup> Unfortunately, Hawaii Electric

<sup>1</sup> The Consumer Advocate initially requested the ability to submit continuous discovery in order to obtain the information necessary for the Consumer Advocate's review of the instant request, similar to the process followed for the pending Hawaiian Electric Company, Inc. ("HECO") rate case. The Company stated, however, that it had difficulty providing timely responses to continuous discovery since the Company's witnesses would not know when the requests would be submitted and plan their work to timely prepare responses. The Company indicated that it preferred knowing when discovery would be submitted so that the witnesses could better schedule their existing work and provide timely responses to the information requests posed by the Consumer Advocate. Based on these representations, the Consumer Advocate reluctantly agreed to limit the number of submissions to six, anticipating that full and complete responses would be provided within the three-week period provided for in the procedural schedule. HELCO's inability to comply with the procedural schedule has prevented the Consumer Advocate from timely posing follow-up questions to Company responses in the earlier submissions, leaving all follow up to potentially one last submission, i.e., the sixth and final submission, which is

Light Company, Inc. ("HELCO" or "Company") has not timely filed responses to each submission of information requests in accordance with the agreed upon response dates set forth in Order No. 22903. As a result, the Consumer Advocate's ability to ask follow up questions, as originally anticipated, has been negatively affected by the lack of timely responses.

To illustrate the magnitude of the situation, the Consumer Advocate provides the following table illustrating the number of questions posed in each submission and the number of responses that remain unanswered to-date.

	<u>Submission Date</u>	<u>Reply Date</u>	<u># IRs Issued</u>	<u># IRs Outstanding<sup>2</sup></u>
1 <sup>st</sup> Submission	7/25/06	8/15/06	236	2
2 <sup>nd</sup> Submission	8/25/06	9/15/06	82	25 - 8 = 17
3 <sup>rd</sup> Submission	9/8/06	9/29/06	70	26 - 3 - 23
4 <sup>th</sup> Submission	9/25/06	10/16/06	58	37 - 4 = 33
5 <sup>th</sup> Submission	10/18/06	11/8/06	41	not yet due
6 <sup>th</sup> Submission	11/1/06	12/1/06	n/a	n/a

As noted from the information contained in the table above, 36%<sup>3</sup> of the responses from the second through fourth submissions have yet to be provided by the Company. Furthermore, over half of the outstanding responses are well over one month past due. It should also be noted that the Consumer Advocate was informed that the Company's ability to timely submit responses to the outstanding discovery was further hampered by the work required to meet the expected filing of the rate applications in Docket Nos. 2006-0386 and 2006-387. This situation occurred because the individuals responsible for reviewing the responses are also responsible for reviewing the documents to be filed in support of the rate applications to be filed in Docket Nos. 2006-0386 and 2006-0387.

In addition, several of the responses the Consumer Advocate has received refer to the Company's intent to update, revise or correct various revenue requirement

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scheduled for today. This is unacceptable and not in the spirit of cooperation under which agreement was reached for the procedural schedule set forth in Order No. 22903.

<sup>2</sup> At 4:10 p.m on October 31, 2006, the Company provided responses to 15 of the 88 outstanding responses. It should be noted that receiving responses late in the afternoon of the eve of a filing date does not provide sufficient time for review in order to determine whether additional discovery is required and then prepare such discovery for filing.

<sup>3</sup> Prior to the submission of 15 late filed responses, provided on October 31, 2006, 42% (i.e.,  $(25 + 26 + 37) \div (82 + 70 + 58)$ ) of the outstanding responses were past due the required filing date. Subsequent to the filing, 36% of the responses remain outstanding and past the filing due date.

elements.<sup>4</sup> The original procedural schedule did not allow adequate time for the Consumer Advocate to review and submit follow up questions regarding the Company now planned revisions. This matter was discussed with HELCO and the Consumer Advocate was assured that the updates, revisions and corrections would not be extensive. Furthermore, the Company stated that a list of the updates, revisions, and corrections would be provided to the Consumer Advocate well before the end of the discovery process. To-date, no such list has been provided. As a result, the Consumer Advocate is presently not certain as to the extent of the revisions, the impact of the revisions, and the reasonableness of such revisions. The Consumer Advocate needs an opportunity to issue discovery on the revisions in order to complete its review and ascertain whether the revisions are reasonable. This matter also requires further discussion with the Company.

Finally, the Company informed the Consumer Advocate that it will be requesting a bifurcated procedural schedule to address Act 162 fuel and fuel related matters.<sup>5</sup> Rather than address these matters in a separate procedural schedule, the Consumer Advocate contends that it would be more efficient to address the matters in conjunction with the pending rate application. Fuel represents 31% of total Operations and Maintenance ("O&M") expense while purchased power represents 48% of the total O&M expense. Furthermore, the issues pertaining to Act 162 fuel related matters cannot be addressed in isolation from total revenue requirements. For example, the Company was previously represented that elimination of the existing energy adjustment clause, which allows the Company to recover/pass through changes in the cost of fuel from levels included in existing base rates, would impact the overall rate of return. Reserving its right to take a different position on the matter, the Company's prior representations certainly illustrate the inter-relationship of Act 162 fuel related issues with the determination of the overall test year revenue requirement. The Company was well aware of the need to address Act 162 matters in June of 2006, and acknowledged in the Stipulation reached in Docket No. 04-0113 (filed on June 30, 2006 and amended on August 8, 2006) that the matter would be addressed in the instant proceeding.

Based on the above, the Consumer Advocate regrettably informs the Commission that the Consumer Advocate can not commit to issuing its final information requests on November 1, 2006. The Consumer Advocate must review the responses to the outstanding discovery to determine whether and to what extent additional data requests will be required. Furthermore, the Consumer Advocate is unable to state whether additional discovery beyond one additional submission will be required since it has not yet received the outstanding responses.

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<sup>4</sup> For example, see Company responses to CA-IR-22, CA-IR-248, CA-IR-331, CA-IR-378, CA-IR-426 and CA-IR-432.

<sup>5</sup> Act 162, Session Laws of Hawaii 2006, amended Hawaii Revised Statutes § 269-16 to provide criteria for designing a public utility's automatic fuel rate adjustment clause.

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The Consumer Advocate's concerns and need for sufficient time to conduct discovery and gather the information necessary to complete the Consumer Advocate's review have been discussed with the Company. While the Consumer Advocate understands that the Company appreciates the Consumer Advocate's concerns, no agreement has been reached on any amendment to the procedural schedule. It must be recognized, however, that the Company needs to timely submit the requested information in order to develop a sound record. The information is also critical to the Consumer Advocate's ability to complete its review and formulate well-reasoned recommendations for the Commission's consideration. The Commission cannot allow a utility to delay the furnishing of information deemed essential to complete the Consumer Advocate's analysis by requiring the Parties to adhere to the procedural schedule previously established (which anticipated timely receipt of such responses, and ample opportunity to submit follow up requests). Such actions will effectively prevent the Consumer Advocate from fulfilling its statutory responsibility of protecting and advancing the interests of consumers of public utility services. The Commission must provide the Consumer Advocate an opportunity to timely obtain all information necessary for the completion of the Consumer Advocate's review to ensure that the Consumer Advocate is able to develop a sound record which supports its recommendations for the Commission's consideration.

In summary, the Consumer Advocate respectfully requests that the procedural schedule be suspended at this time. The requested suspension will remain in effect until the Company is able to provide full and complete responses to all outstanding discovery, the Consumer Advocate has an opportunity to review such responses, and determine the extent to which additional requests are necessary. Furthermore, by granting the requested suspension, the Parties will have an opportunity to incorporate the Act 162 fuel related matters into the procedural schedule and efficiently process the pending rate application.

Sincerely yours,



Cheryl S. Kikuta  
Utilities Administrator

CSK:tt

cc: Warren Lee  
Dean Matsuura  
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